

BOOK REVIEWS

The Law of Conversion. By Renzo D. Bowers. Published by Little, Brown & Co., Boston. 1917. pp. lx, 583.

No book can please all men; it would seem praise enough to most to say that they do one thing well. Mr. Bowers has arranged his book more handily for reference than has any other legal author whose work we have seen—no slight advantage in a work intended primarily for the practitioner. His table of contents is remarkably clear and full; his digesting is reasonably accurate; he cites American decisions plentifully and, in the main, to the point. If in his treatment he does not give us the benefit of that study of legal history which proved to him that his subject was "of rather ancient origin," it may be he makes up for that by industry in collecting the cases in this country.

The thought of a book on the law of conversion was a happy one. It is a vexed and troublesome field, both in its *what* and in its *why*. It is well worth careful treatment as a unit. And we agree with Mr. Bowers that the principles involved have become no less distinct and definite because modern procedure has merged trover with the simple civil action; our regret is rather that those principles have become no more distinct and definite by reason of his book. It is many years now since Bishop hazarded his view that one desirable feature of a text-book was to grapple with difficulties, "to overcome them if it can, and to state the result, either that the principle is so and so, or that the author cannot ascertain what it is." Co-ordination, clean presentation of difficulties, reasoned solution of them, are strikingly rare in Mr. Bowers' treatise. But when in the future the true work on the law of conversion appears, its author will have found much of the drudging material-collection done for him in advance; meanwhile the present volume will serve the practicing lawyer as a ready guide to the authorities.

KARL N. LLEWELLYN

A Treatise on the Law of Inheritance Taxation. By Lafayette B. Gleason and Alexander Otis. Published by Matthew Bender & Co., Albany. 1917. pp. lviii, 836.

Law-books do not as a rule present striking points of individuality. This treatise is, however, somewhat of an innovation in several ways. For one thing, the absence of footnotes gives the pages an appearance unfamiliar to one accustomed to the ordinary law-book. The absence of notes does not indicate an omission of the citation of authorities; these are simply inserted in the text at the places where the note-figures would normally appear. This innovation is clearly an improvement in the matter of eliminating the eye-strain involved in transferring the attention from the middle to the bottom of the page and back again; on the other hand, it tends to some extent to break the continuity of the text. It will be interesting to observe how this feature is received by the legal profession.

Another point of departure from the traditional form of a law-book appears in the table of cases. Instead of being arranged in a single alphabetical list, it is split up into thirty-seven different alphabets arranged by jurisdictions, beginning with New York and ending with the United States and England.

Such an arrangement is no doubt useful from the standpoint of one interested primarily in a particular state, but it might cause considerable inconvenience to a lawyer looking for a particular case with which he is familiar by name and subject-matter, but not by jurisdiction beyond the fact that it was a western case.

Apart from such marks of individuality in the matter of form, this treatise would attract attention by the clearness and simplicity of its style and by frequent evidence that consideration has been given to the economic as well as to the legal principles involved in the subject. The general outline of the work is logical and appears to be carefully worked out in detail. To anyone interested in inheritance taxes, whether as lawyer or as layman, this treatise forms an important addition to the literature of the subject.

W. H. McCLENON

WASHINGTON, D. C.

Joseph H. Choate: New Englander, New Yorker, Lawyer, Ambassador. By Theron G. Strong. Published by Dodd, Mead & Co., New York. 1917. pp. xvii, 390.

The author of this biography was well qualified for the work that he undertook. Himself of legal lineage, of New England stock, and of high standing at the New York Bar, he had already trained his pen when writing his reminiscences. In his *Landmarks of a Lawyer's Lifetime* he has preserved for posterity a record of the appearance and peculiarities of the noted New York lawyers of his day.

The book which he has now published was written with the approval of his subject, who gave him much material. Not the least valuable of this is the sketch of the Choate family with its record of the simple intellectual life characteristic of the aristocracy of New England until it was supplanted by the plutocracy of the twentieth century. Much of the book was evidently written while Mr. Choate was living. This is apparent in the chapter describing him as a lawyer; this speaks as if he were alive (p. 135), and it contains the only error that the reviewer has been able to discover, a reference to Rufus Choate as the uncle of Joseph. That was the general belief of the bar, and consequently the reference must have been written before the author secured the information contained in an earlier chapter as to the degree of kinship. The author's modesty has made him omit something which would have increased the value of the book to the student of history,—the addition of notes to his accounts of the various trials, with references to the descriptions of the opposing counsel contained in his *Landmarks of a Lawyer's Lifetime*.

The narrative is clear and full of interesting quotations from speeches and cross-examinations. There is a refreshing absence of those letters which are the filling and the bane of most biographies. The book is written in that perfect taste which is the concomitant of high breeding. The eulogy is discriminating and nowhere exaggerated, and the limitations of the hero are stated with justice in language that can offend no one. The arrangement is not chronological, but the incidents are skillfully grouped in the different phases of the career of that great advocate. For as an advocate, Joseph H. Choate was great: greater than any of his time. He usually avoided a retainer in criminal cases, and with the exception of the contempt proceeding before Judge Smyth, he never, so far as the reviewer has been able to ascertain, appeared in any except those which affected the validity of combinations of capital or the culpability of corporations; the case which decided the unconstitutionality of the federal income tax

of 1894 was the most important legal decision of his time, and none since the creation of the Supreme Court of the United States was won against greater obstacles. No one ever succeeded in so many cases involving such large sums of money. None ever possessed a style of oratory so suited to advocacy. None exemplified with such perfection the truth of the maxim that the greatest art is that which conceals its existence. He was a great master of rhetoric, but this only his keenest observers realized. So great was his mastery that until he had passed middle age, his contemporaries did not appreciate the depth and the range of his knowledge of the law—the full extent of his capacity to argue successfully a proposition that was purely legal. It was formerly the custom to speak of him as a great jury lawyer—as he surely was—but to speak in a manner which implied that he was nothing more. Others who argued *ore rotundo*, who made a parade of learning, who used long and sonorous sentences, were then believed to be in the argument of legal doctrines his superiors. The judges who listened to these men praised their oratory and rhetoric, but the decision was usually in Choate's favor. All that he did seemed easy to those who had not tried it. He knew the truth of Aristotle's statement that ornament distracts attention from argument and often puts the hearers upon their guard. Burke's speeches in the trial of Warren Hastings are still read with admiration; those of Law are forgotten. But Burke so antagonized his audiences that he received a vote of censure from the House of Commons which retained him, while Law won the case. He resembled Scarlett more than any other barrister; but in the style of the English advocate, simplicity usually approached homeliness, while Choate's choice of words and the structure of his sentences had a distinction, although it was never strained or condescending. The gravity of his themes was usually lightened by a humor which never descended to a jest, that was unappropriate, and his arguments were at times driven home by strokes of sarcasm which never excited sympathy for the victim by a descent into vituperation. In this respect he excelled Lysias, the only one of the Greek and Roman orators with whom he can properly be compared.

There was no declamation in his delivery. Although his voice was pitched to the key of the hall, his tones resembled those which he used in conversation. There was no pose in his attitude or gestures. He often spoke with one hand in his pocket, and it was amusing to see how the goslings of the bar would imitate him in this respect. Yet he could be dramatic. In the case of *Hynes v. McDermott* which Mr. Strong describes, he began his argument by putting his hands on the shoulders of the two boys for whom he appeared and telling the jury that he relied upon them to overcome the oratory of his distinguished opponent, William A. Beach, who in truth was a great declamatory rhetorician.

He has often been compared to his great kinsman Rufus Choate, but there was little similarity between them. Rufus ransacked literature for illustrations and the poets for quotations. In the *Dalton* divorce case he referred to the parting of Aeneas and Dido. It has even been said that he quoted Cicero in the original to Boston jurors. Only in Boston could a man dare do this. The effect of his eloquence was often swept away by the plain talk of his rival at the Massachusetts Bar, Jeremiah Mason, who would begin his reply: "Now that my brother Choate has ceased gyrating, I will proceed to state to you a few points." Joseph H. Choate quoted nothing to a jury from an author with whom they were not familiar, and he usually confined himself to the Bible, Shakespeare, and Mother Goose. When preparing his defense in the breach of promise case of *Martinez v. del Valle* he borrowed a report of the *Dalton* trial from Surrogate Arnold, but soon threw it aside. Such ornate rhetoric could not serve him as a model.

There was no appearance of study in his arguments and they never smelled

of the lamp, yet they were the product of hard labor. He freely used clerks and junior counsel to collect authorities upon questions of law with which he was familiar. When the decision depended upon the application of a doctrine of law that was new to him, he carefully studied all of the opinions. His arguments were rarely written, but they were carefully constructed in his mind, and he enjoyed discussing them with others, and it was a great treat to younger lawyers when he honored them by such a rehearsal. In his legal argument which will be longest remembered, that against the validity of the income tax, his opening had the appearance of being extemporaneous in its allusions to the argument of Mr. Carter to whom he replied. One of his junior counsel had, however, suggested in a consultation that there was much in Thackeray's essay on *Thunder and Small Beer* that could be applied to Carter's rhetoric. The writer of this review has heard him in what was supposed to be an informal speech at a reception after his appointment to the Ambassadorship include a reference containing compliments to an older member of the bar whom he had expected to be present but who stayed away.

His greatness was limited to advocacy. He initiated no reforms in the administration of justice, and many of those adopted in his time met with his opposition. In vision of the future, he was not ahead of his class and his contemporaries. If he had been, he might have been less successful. As a politician he was an amateur. Although he never aspired to the bench, as do most of the great advocates in England but is rarely the case of those in this country and in France, he wished to follow the example of Rufus Choate, his senior partner and kinsman, by serving a term in the Senate of the United States. He was probably the only man in the State of New York who would not have been made ridiculous by the fiasco of his senatorial campaign. He did not lead his ticket when he ran for the State Constitutional Convention. His career as President of the Convention was creditable but not extraordinary. His political speeches were not remarkable. He was surpassed by several of his contemporaries in the class of oratory which the rhetoricians term *epideiktic*—that which seeks not to convince but to instruct and entertain the audience, that in which Isocrates was first amongst the ancients, and of which the greatest American exponents have been Webster and Everett. He discharged the duties of ambassador to the Court of St. James as well as, perhaps a little better than Lowell and Phelps who preceded him. But as an advocate in the courts, he was supreme.

ROGER FOSTER

NEW YORK CITY